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Via ECFS & IBFS

December 20, 2021

Chairwoman Jessica Rosenworcel
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: *China Telecom (Americas) Corporation*, GN Docket No. 20-109;
ITC-214-20010613-00346; ITC-214-20020716-00371; ITC-T/C-20070725-00285

Dear Madam Chairwoman:

We represent China Telecom (Americas) Corporation (“CTA”). On December 10, 2021,¹ and December 17, 2021,² the International Bureau (the “Bureau”) flatly refused CTA’s urgent requests for clarification and confirmation of the status of certain CTA services³ under the Commission’s November 2, 2021, Order on Revocation and Termination (“Revocation

¹ Letter from Thomas Sullivan, Chief, International Bureau, Federal Communications Commission, to Andrew D. Lipman, Morgan, Lewis & Bockius LLP, Counsel to China Telecom (Americas) Corporation, GN Docket No. 20-109, ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285 (Dec. 10, 2021) (“*December 10 FCC Letter*”).

² Letter from Troy Tanner, Deputy Chief, International Bureau, Federal Communications Commission, to Andrew D. Lipman, Morgan, Lewis & Bockius LLP, Counsel to China Telecom (Americas) Corporation, GN Docket Docket No. 20-109, ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285 (Dec. 17, 2021) (“*December 17 FCC Letter*”).

³ Letter from Andrew D. Lipman, Morgan, Lewis & Bockius LLP, Counsel to China Telecom (Americas) Corporation to Marlene H. Dortch, Secretary, Federal Communications Commissions, GN Docket No. 20-109, ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, (Dec. 14, 2021) (“*December 14 Letter*”); Letter from Andrew D. Lipman, Morgan, Lewis & Bockius LLP, Counsel to China Telecom (Americas) Corporation to Marlene H. Dortch, Secretary, Federal Communications Commissions, GN Docket No. 20-109, ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, (Dec. 6, 2021) (“*December 6 Letter*”); Letter from Andrew D. Lipman, Morgan, Lewis & Bockius LLP, Counsel to China Telecom (Americas) Corporation to Marlene H. Dortch, Secretary, Federal Communications Commissions, GN Docket No. 20-109 ITC-214- 20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285 (Nov. 19, 2021) (“*November 19 Letter*”).

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Order”).⁴ In the December 17 letter, the Bureau even refused to have a video or telephone conference to hear CTA’s concerns.

CTA is surprised and disappointed that the Commission staff will not even discuss CTA’s repeated requests for clarification of the Commission’s unfounded assumption that certain CTA non-MVNO services (*i.e.*, International Private Leased Circuit (“IPLC”), International Ethernet Private Line (“IEPL”), and Multiple Protocol Label Switching/Virtual Private Network (“MPLS VPN”) services, collectively referred to as “non-MVNO services”) “appear to be offered pursuant to CTA’s Section 214 authority.”

The Bureau’s refrain has been that “CTA has not provided the detailed and verifiable factual support needed for the Commission to evaluate the claim that all of CTA’s non-MVNO services are provided as private carriage” and that “CTA still has not done so.”⁵ The fact is, however, the Commission never asked CTA for this “factual support.”⁶ Indeed, the Commission denied CTA’s repeated and consistent requests for a fact-based hearing⁷ prior to the Revocation Order that would have afforded CTA due process and undoubtedly elicited information upon which the FCC could evaluate properly the classification of CTA’s non-MVNO services. Instead, the Commission opted to rely on assumptions rather than facts for its Revocation Order.

CTA does not understand why the Commission is reluctant to receive information that it acknowledges is lacking. CTA has timely answered any question asked by Congress, Executive Branch agencies, and the FCC. CTA has also met with Executive Branch agencies for hours to explain CTA’s services and their provisioning. CTA answered the FCC’s questions in its Order to Show Cause in this docket and provided hundreds of pages of

⁴ *China Telecom (Americas) Corporation*, GN Docket No. 20-109, Order on Revocation and Termination, FCC 21-114, paras. 156, 157 (rel. Nov. 2, 2021) (“*Revocation Order*”).

⁵ *December 17 FCC Letter* at 1. *See also*, *December 10 FCC Letter* at 1. Although the Bureau does not mention it, CTA also maintains that MPLS VPN service is an information service, not a communications service.

⁶ In the Order to Show Cause, the International, Wireline Competition, and Enforcement Bureaus directed CTA to submit “a description of the services” it provides both under its Section 214 authorizations and otherwise, but did not request any supporting documentation for CTA’s classification of its services. *China Telecom (Americas) Corporation*, Order to Show Cause, DA-20-448, GN Docket 20-109, ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, para. 12(6) (rel. April 24, 2020). The *Instituting Proceedings Order*, issued after the Commission reviewed CTA’s response to the Order to Show Cause, did not question CTA’s classification of its non-MVNO services nor request any further supporting evidence. *China Telecom (Americas) Corporation*, GN Docket No. 20-109, Order Instituting Proceedings on Revocation and Termination and Memorandum Opinion and Order, FCC 20-109, para. 7 & n.24 (rel. Dec. 14, 2020) (“*Instituting Proceedings Order*”).

⁷ *See, e.g.*, *CTA June 8 Response*; *China Telecom (Americas) Corporation*, Reply Comment to Order Instituting Proceedings, GN Docket 20-109 (Mar. 1, 2021) (“*CTA March 1 Reply Comment*”); Letter from Andrew D. Lipman, Morgan, Lewis & Bockius LLP, Counsel to China Telecom (Americas) Corporation to Denise Coca, Chief, International Bureau, Federal Communications Commissions, GN Docket No. 20-109, (Oct. 8, 2021) (“*October 8 Letter*”).

information to the FCC. Yet now the Commission appears unwilling to hear CTA's answers to questions the FCC itself has raised. Such a conscious decision to erect blinders to the facts and refuse a meeting is unprecedented in our experience.

The staff's responses in this case run counter to your own statements touting the openness of the FCC. In your recent confirmation hearing, you stated to the Senate Commerce Committee that "the FCC's open and transparent administrative processes are well-suited"⁸ when fact-specific analyses are required. The determination of whether a service is a common carrier telecommunications service is fact-specific, as your own International Bureau chief acknowledged on Dec. 10. Furthermore, you also represented to the Senate that you would "continue to ensure the agency [conducts policymaking] in an open and transparent way that provides all parties ... the opportunity to meaningfully engage."⁹ Again, it is hard to reconcile such statements if CTA is denied a full opportunity to present information to the Commission.

Unfortunately, the refusal to meet with CTA on an issue that was first mentioned in the Revocation Order reinforces the uniquely prejudicial nature of the proceedings against CTA and the perception that the Commission's decision was predetermined. CTA does not believe the FCC has treated any other license holder of twenty years as it has CTA. The Commission's approach in this case is contrary to judicial precedent and fails to provide the notice and comment required for the Commission to change policy.

The December 10 FCC Letter acknowledges that "[t]he classification of services as common- or private carriage is a fact-based inquiry, governed by longstanding precedents, including the *NARUC* cases from the D.C. Circuit." And the Revocation Order clearly does not make such a fact-based inquiry; indeed, it does not even cite the *NARUC* precedents. It therefore should be a simple matter for the Commission to confirm that it has not made any determination that any particular non-MVNO service is (or is not) offered by CTA on a common carrier basis. Its unexplained refusal to acknowledge this is puzzling and suggests a back-door attempt to undermine the long-standing legal distinction between private carriage and common carriage. If the Commission tries to paper over that distinction in this case, because of its apparent animus towards CTA, it risks upsetting decades of reasonable and widespread carrier reliance on current law, upending telecommunications business models for hundreds of providers, and impairing service arrangements to thousands of customers. Many major carriers rely on upon the certainty of the "long-established" *NARUC* precedent as the basis for their private carrier services and are now at risk of the FCC assuming (without evidence) that such services are common carriage.

Despite the staff's refusals to date, CTA would be responsive to any request from the Commission to provide further information and materials, and would welcome a video

⁸ Questions for the Record, Responses of Jessica Rosenworcel, Federal Communications Commission, at 15 (Nov. 18, 2021) ("*Responses of Jessica Rosenworcel*").

⁹ *Responses of Jessica Rosenworcel* at 22.

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conference or face to face meeting to provide a detailed explanation of its services and to answer any questions the staff may have about them. But, absent a final factual determination and decision from the Commission that each of its non-MVNO services are communications services in fact offered on a common carrier basis, CTA intends to continue offering them on a private carrier basis after January 3, 2022, to honor its contractual obligations and avoid undue disruption to its customers' operations.

Respectfully submitted,

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/s/

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